

BEFORE THE FEDERAL ELECTION COMMISSION

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COMMISSION
SECRETARIAT

JUN 10 11 29 AM '99

In the Matter of

American Eco Corp.
Comete Hong
Gilberto Pagan
DNC Services Corporation/Democratic
National Committee and Andrew Tobias,
as treasurer
K&L International, Inc.
Chong Kim & Associates
Il Sung Construction Co., Ltd.
Chong H. Kim
Robert S. Lee
Ying Chiu Tien
Howard Glicker
Yama Ren Trade Enterprise, Ltd.
J&M International, Inc.
Jack Ho
People's Republic of China
Joan Tumpson
Clinton/Gore '96 Primary Committee,
Inc. and Joan Pollitt, as treasurer
David J. Wimer
International Buddhist Progress Society, Inc.
d/b/a/ Hsi Lai Buddhist Temple
Maria Hsia
Master Shing Yun
Man Ho
Yi Chu

MUR 4530
Pre-MUR 372

SENSITIVE

GENERAL COUNSEL'S REPORT

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I. INTRODUCTION

MUR 4530 was generated by a complaint filed on October 22, 1996 by the Democratic National Committee ("DNC") whereby the DNC asked the Commission to investigate issues which were raised in the media surrounding "certain contributions" to the DNC.¹ In June 1997, the Commission made reason to believe findings regarding thirty-seven individual and corporate respondents in this matter, mostly involving contributions to the DNC during 1996. Based on new information obtained by this Office through its own investigation and Congressional committees' hearings, this Office recommended, and the Commission made, reason to believe findings against twenty-two additional individual and corporate respondents last June.

Since the Commission's first reason to believe findings, this Office has been engaged in discovery,² obtaining over 650,000 pages of documents from respondents. These documents are in an electronic database, and have been reviewed and coded by subject matter, date, relevant players, and other characteristics, to facilitate searches and retrieval. Another electronic database holds approximately 160,000 pages of documents obtained from the Senate Governmental Affairs Committee. Earlier this year, the Senate passed a Resolution permitting the Commission to use these documents in its investigations and any ensuing litigation. All depositions and exhibits from the Senate Governmental Affairs Committee's, and many from the House

¹ Three other complaint-generated matters, MURs 4531, 4547 and 4642, are being handled along with MUR 4530 because of the nexus between the four matters. If the Commission authorizes opening a MUR with respect to Pre-MUR 372, discussed herein, it will also be handled with MUR 4530.

² The investigation in MUR 4530 was curtailed during the Commission's August 1998 -- October 1998 review of the Major '96 cases.

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Committee on Government Reform's respective campaign finance investigations, as well as their Reports, are public and have been reviewed.³

As a result of parallel criminal proceedings, including the indictments of Maria Hsia, Charlie Trie, and Pauline Kanchanalak, this Office has been hampered in its ability to depose, interview, or obtain interrogatory responses from relevant persons who have asserted their Fifth Amendment rights, fled the country, or otherwise declined to cooperate.⁴ The Senate and House committees, however, in their campaign finance investigations, immunized several witnesses, whose testimony, in conjunction with other available evidence, have enabled this Office to move forward. We sent out probable cause to believe briefs to the Hsi Lai Buddhist Temple and five Temple-related respondents on March 30, 1999,⁵ and are currently briefing several other respondents. In some cases, respondents and witnesses have been cooperating, and we are engaged in further discovery and moving toward resolution. In other cases, we are engaged in pre-probable or probable cause conciliation. In fact, to date, this Office has conciliated with three respondents, who have paid over \$100,000 in civil penalties.

³ While the Senate Committee cooperated with the Commission, the House Committee did not respond to a July 30, 1997 request for information by the Commission Chairman, *see* the July 23, 1997 Memorandum to the Commission "Proposed Letters to Congressional Investigative Committees," or a July 3, 1997 letter from the Associate General Counsel for Enforcement.

⁴ This Office had requested, and hoped for, substantial assistance in its investigations, from the Department of Justice's Campaign Financing Task Force, which is conducting criminal investigations of many of the same matters. In particular, we hoped to obtain or have access to FBI 302s (witness interviews). However, after several meetings with representatives of the Task Force and the FBI, by letter dated February 5, 1999, the Task Force advised that "there is no reasonable likelihood of making 302s available to the FEC staff in response to your requests in the foreseeable future." Attachment 1a. The Task Force, however, has encouraged this Office to continue its parallel investigation, and taken such actions as including in Johnny Chung's plea agreement an obligation to cooperate with the FEC. Recently, both Charlie Trie and John Huang, respondents in MUR 4530, have agreed to plead guilty to criminal campaign finance violations. This Office has been disappointed with the lack of communication from the Task Force concerning these plea agreements, and has written to the Task Force to request access to information about, and from, both Trie and Huang. Attachment 1b.

⁵ All of these respondents have requested a stay of the Commission's proceedings. *See* discussion and recommendations at Part IIB5 of this Report, *infra*.

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In this Report, we are making a number of diverse recommendations, involving several different persons and entities, at various stages of the enforcement process. We have grouped our discussion by the stage of the process into which the respondents fall.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

1. Section 441e

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits the solicitation, making, and receipt of any campaign contribution from foreign nationals:

It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

2 U.S.C. § 441e(a). Commission regulations further prohibit foreign nationals from participating in any decision-making process regarding any federal or non-federal election-related activities, including contributions or expenditures. 11 C.F.R. § 110.4(a)(3). These prohibitions apply to all federal, state, and local elections, and to both expenditures and contributions by foreign nationals. 11 C.F.R. § 110.4(a)(1). The prohibitions of Section 441e(a) apply to all contributions "in connection with an election to any political office," including contributions to the non-federal accounts of national party committees.⁶

⁶ One district court recently held that the foreign national prohibition at Section 441e(a) applies only to contributions for federal elections. *U.S. v. Trie*, 23 F. Supp.2d 55 (D.D.C. 1998). This opinion, however, failed to consider either the legislative history establishing the provision's broad scope or the Commission's consistent application of the prohibition to non-federal elections. See, e.g., MURs 2892, 3460, 4250, 4398, and 4638.

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The Act defines "foreign national" as either a foreign principal as defined in 22 U.S.C. § 611(b), or a noncitizen who is not lawfully admitted for permanent residence as defined in 8 U.S.C. § 1101(a)(20). The term "foreign principal" includes:

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

22 U.S.C. § 611(b).

Thus, Section 441e(a) of the Act prohibits foreign national individuals, governments, and other entities from making contributions and expenditures in connection with federal, state, and local elections, and from participating in the decision-making process regarding such contributions and expenditures. Permanent residents, however, are not considered foreign nationals and are permitted to make contributions and participate in the decision-making process so long as they are physically present in the United States. 2 U.S.C. § 441e(b)(1) and (2); 22 U.S.C. § 611(b)(2).⁷

In a series of advisory opinions, the Commission has concluded that domestic subsidiaries of foreign corporations are permitted to make contributions not otherwise prohibited by the Act so long as the source of the funds is the U.S. subsidiary and not the foreign national parent, and no foreign national individual participates in the decision-making process.

⁷ As noted above, Section 441e(a) prohibits foreign nationals from making contributions directly or through any other person. It also makes it unlawful for any person to "solicit, accept or receive" any such contribution. This provision thus prohibits even a U.S. citizen's use of money acquired from a foreign national, if that money was

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11 C.F.R. § 110.4(a)(3); see A.O.s 1989-20, 1985-3 and 1981-36 (to allow foreign parent to provide funds for subsidiary's contribution would, in essence, allow the foreign national to do directly what it is forbidden to do indirectly); A.O. 1992-16 (subsidiary must be able to demonstrate that funds for contribution were generated by its own revenues and not those received solely from its foreign parent); A.O. 1990-8 (foreign national corporate board members prohibited from voting on matters concerning a separate segregated fund); A.O. 1989-20 (subsidiary ineligible to contribute where all directors and officers were foreign nationals; subsidiary cannot be mere corporate shell); *see also* A.O.s 1995-15 and 1982-10.⁸

2. Section 441f

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person.

2 U.S.C. § 441f. Unlike Section 441e, which applies to contributions made in connection with elections "to any political office," Section 441f is limited to elections for federal office, based on the definition of "contribution" at Section 431(8) and the lack of any contravening language within Section 441f. *See also* MUR 3460 General Counsel's Report dated June 4, 1993, pages 17-18.

acquired for the purpose of enabling the foreign national to make political contributions. *Cf.* 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(iii).

⁸ For other matters addressing 2 U.S.C. § 441e, see MUR 4583 (Gadhia); MUR 4398 (Kramer) (Commission conciliated with contributor individual; recipient); MUR 4239 (Arison) (contributor individual; recipient); MUR 3801 (Sharon Pratt Kelly Committee) (recipient); MUR 3541 (Schoemehl) (contributor individual; solicitor; and recipient); MUR 3460 (Sports Shinko) (contributor domestic subsidiary of foreign corporation and foreign national directors); MUR 2892 (Friends of Frank Fasi) (contributor individuals and corporations, instrumentality of a foreign government, and foreign-owned domestic corporations); and MUR 4884 (Future Tech International, Inc.).

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B. Analysis**1. Probable Cause Matters**

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b. Ying Chiu Tien

On June 17, 1997, the Commission found reason to believe that Ying Chiu Tien ("Tien") violated 2 U.S.C. §§ 441e(a) and 441f by making a \$5,000 contribution to the DNC on

" Tien's counsel have referred to her as both "Ms. Tien" and "Ms. Chiu." Since this Office's earlier reports have referred to her as "Tien," we continue to do so now.

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behalf of two foreign nationals for which they reimbursed her. After Tien submitted discovery responses, the Commission, on February 13, 1998, approved a conciliation agreement calling for a civil penalty of \$5,000. Counsel for Tien countered with a \$3,000 civil penalty offer, but then withdrew the offer due to concern that settling with the Commission would have a negative impact on Tien's application for U.S. citizenship. (She is a permanent resident.)¹²

On December 17, 1998, this Office sent Tien a brief recommending that the Commission find probable cause to believe that Tien had violated 2 U.S.C. §§ 441e(a) and 441f. Tien's counsel filed a reply brief on January 21, 1999. In his reply brief, and consistent with Tien's previous submission, counsel states that Tien was invited by a nun from the Hsi Lai Temple to attend a political event at the Temple honoring Vice President Gore. The nun told Tien that the Temple requested that any couple attending the event donate \$5,000 to the DNC.

Tien invited a family friend, who is a foreign national, to attend; both he and a friend of his, also a foreign national, ultimately accompanied Tien. Because the two foreign nationals had only brought travelers checks with them, and the contribution had to be made via check, Tien made a \$7,500 contribution (\$2,500 per person) from her personal checking account to the DNC so that all three could attend the event. The other two individuals reimbursed Tien \$2,500 apiece, or \$5,000. The DNC has since refunded Tien's \$7,500 check.

In his reply brief, counsel raises several legal issues. With respect to section 441e(a), counsel takes the position that, because Tien made her contribution to the DNC, "the contribution was not made in connection with an election to political office or in connection with

¹² Tien's counsel was specifically concerned about Question 15b of the Immigration and Naturalization Service's Application for Naturalization: "Have you ever been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance excluding traffic regulations?" Counsel has not reasserted his concerns about the impact of this proceeding on Tien's application for U.S. citizenship in his reply brief. When the staff spoke with him recently, counsel was not sure of the status of Tien's application for U.S. citizenship and said that he had placed a call with her immigration attorney.

'any primary election, convention, or caucus held to select candidates for political office.'"

Counsel also asserts that the "statutory language of section 441e(a) . . . requires proof that Ms. Chiu had solicited, accepted, or received such a contribution" which, in turn, requires that the evidence "establish that Ms. Chiu was an agent for a candidate, convention or caucus. . ."

Turning to section 441f, counsel states that Tien did not "knowingly" permit her name to be used to effect the contributions made by her friends, because she did not act "knowingly to conceal the true identity of the person (sic) making the contribution."

Counsel provides no statutory basis nor any case law for his restrictive reading of section 441e(a). To the contrary, contributions to the DNC are clearly encompassed in the statutory reference to "election to any political office." See 2 U.S.C. §§ 431(14) and (16) ("the term 'national committee' means the organization which . . . is responsible for the day-to-day operations of [a] political party at the national level. . . the term 'political party' means an association, committee or organization which nominates a candidate for election to any Federal office. . ."). Indeed, in an August 1998 letter to the sentencing judge in *U.S. v. Johnny Chung*, Cr. No. 98-230 (C.D. Calif.), the DNC itself asserts that it "has had three principal functions since its inception: (1) overseeing the presidential nomination process and putting on the National Convention; (2) developing and communication policy positions or "messages;" and (3) assisting Democratic candidates to get elected at all levels of government." Attachment 3.

Moreover, counsel's attempt to restrict the reach of section 441e(a) to agents of candidates, conventions or caucuses also fails. The statutory language forbidding "any person to solicit, accept, or receive any such contribution from a foreign national" represents a straightforward imposition of liability on "persons" (defined in section 431(11) to include individuals, as well as committees, corporations and other entities) who solicit contributions

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from foreign nationals. See MUR 3541 (In the Matter of Vincent C. Schoemehl, Jr.) (the Commission found reason to believe that an individual who solicited a foreign national to make a campaign contribution violated section 441e(a)).

Counsel's argument seems to reflect language used by the court in *FEC v. Rodriguez*, No. 86-687-CIV-T10, slip op., (M.D. Fla. May 5, 1987). In denying the FEC's motion for summary judgment, the court stated that, because Rodriguez was not a candidate or an agent of a candidate, he could not have "accepted" the contribution for purposes of 2 U.S.C. § 441f. However, the fact pattern in *Rodriguez* differs from the facts in Tien's situation. In *Rodriguez*, the court characterized the defendant as a "go-between" and a "messenger" for an individual engaged in making contributions in excess of the statutory limit, whereas Tien herself invited the foreign nationals to the function, wrote the contribution check to the DNC, and was reimbursed by the foreign nationals.¹³

Finally, Tien's counsel acknowledges that Tien was asked to "attend a political event at the Temple honoring Vice President Al Gore" and that "the Temple requested that any couple attending the event donate \$5,000 to the Democratic National Committee." Further, Tien knew that her guests were foreign nationals, that she wrote a check to the DNC covering her contribution and theirs, and that they then reimbursed her for their respective shares of the contribution. Thus, Tien had the requisite understanding of the facts to have committed a "knowing" violation of the Act. See *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp.

¹³ Tien's counsel's reading of the law would invite foreign nationals who may not be subject to U.S. jurisdiction to circumvent the law by making contributions through conduits who would then not be liable for the contributions. Cf. AO's 1992-16, 1989-20, 1985-3 and 1981-36 (the Commission has not permitted contributions by domestic subsidiaries of foreign corporations where the source of funds is the foreign national parent, because this would essentially permit the foreign national parent to make contributions indirectly when it could not do so directly).

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985, 986-7 (D.N.J. 1986) ("a 'knowing' standard, as opposed to a 'knowing and willful' one, does not require knowledge that one is violating a law, but merely requires an intent to act").

Based on the facts and legal analysis described above, this Office recommends that the Commission find probable cause to believe that Tien violated Sections 441e(a) and 441f. However, we note that Tien appears to have played no part in the broader Hsi Lai Temple reimbursements, as described in the MUR 4530 General Counsel's Report dated May 4, 1998, at pp. 5-14 and related briefs. Instead, this appears to have been an isolated situation. In addition, this Office wishes to conserve investigative resources by focusing on the larger violative contributions at issue in this case. Therefore, due to the specific facts and circumstances of this contribution, we also recommend that the Commission admonish Tien and take no further action with respect to her.¹⁴

2. Pre-Probable Cause Matters

¹⁴ The recommendation to take no further action is consistent with the recommendations regarding Joan Tumpson, another Respondent who solicited an isolated foreign contribution in connection with a particular fundraising dinner. See *infra* IIB.4.b.

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c. Yama Ren Trade Enterprise, Ltd.

On June 17, 1997, the Commission found reason to believe that Yama Ren Trade Enterprise, Ltd. ("Yama Ren") violated 2 U.S.C. § 441e(a). The Commission also issued interrogatories and a document subpoena to Yama Ren. After several attempts to achieve compliance with the Commission's subpoena and order were unsuccessful, the Commission authorized a subpoena enforcement suit. Shortly after the suit was filed on March 17, 1998, Yama Ren provided its responses and the suit was dismissed on April 17, 1998.

The Commission's reason to believe finding was based on information provided by the DNC, which showed that, by check dated July 17, 1996, Yama Ren made a \$10,000 contribution to the DNC with funds from its foreign parent, Yama Ren Trade Enterprise, Ltd. of Taiwan ("Yama Ren Taiwan"). However, this Office's investigation showed that the contribution appears to have actually come from funds of the U.S. subsidiary and that no foreign national participated in the decision to make the contribution.

Based on Yama Ren's discovery responses, and a telephone interview (through an interpreter) with Sam Chu ("Chu"), Yama Ren's president, this Office developed the following

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information. Yama Ren, a wholly owned subsidiary of Yama Ren Taiwan, was incorporated on October 25, 1994 in the State of California. Sam Chu, its president, is a U.S. citizen.²¹ The company is a wholesale importer/exporter of printing ink, crafts, electronics parts, grape wine and audio CDs. It also does consulting work with Hyatt Hotel's investments in Taiwan and China.

According to Chu, other than \$50,000 in start-up capital from Yama Ren Taiwan around October, 1994 when Yama Ren was initially established, Yama Ren Taiwan gave no financial support to Yama Ren. Chu stated that Yama Ren received no financial support from its parent during 1996, when the contribution at issue was made. Chu maintained that the \$10,000 contribution at issue was made with funds generated by Yama Ren in the ordinary course of business. Business invoices and bank statements Yama Ren provided for the period from May, 1995 through August, 1997 support Chu's claims that the funds used to make the contribution were from Yama Ren's ordinary business transactions. During the months preceding the contribution, Yama Ren's invoices showed significant business income, over \$800,000 in May and over \$417,000 in July of 1996. In addition, Yama Ren's checking account showed total deposits and credits of over \$12,000 in May, \$92,000 in June and \$24,000 in July of 1996. Moreover, Yama Ren's checking account records show that when the \$10,000 contribution check was cashed on July 26, 1996, Yama Ren was left with a balance of \$9,281 in its account.²²

²¹ Chu provided a copy of a page of his U.S. passport showing that he was a U.S. citizen at the time of the contribution. In a telephone interview, he stated that he has been a U.S. citizen for over 20 years.

²² Yama Ren's checking account showed an average monthly ending balance of less than \$8,000 during the period from January through August of 1996. DNC records show another \$10,000 contribution check from Yama Ren dated August 29, 1996. That contribution was attributed to the DNC's Chicago Gala '96. In a letter dated June 4, 1998, Chu advised this Office that the check bounced and was never cashed. Yama Ren's bank records indicate that the check was never cashed.

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In his interview, Chu stated that he decided that Yama Ren would make a \$10,000 contribution to the DNC because he learned of the principles advocated by the Democratic Party and liked them.²³ Chu stated that he neither informed the owner of Yama Ren Taiwan, Chung (or Chong) Min Chen, of the contribution nor discussed making the contribution with Chen, noting that he did not need Chen's permission. This Office has no evidence to the contrary. When asked why he used a Yama Ren check to make the contribution rather than a personal check, Chu stated that he "liked the idea," and added that at the time, the company was making money. DNC contribution tracking forms show that the contribution was attributed to a July 1996 banquet with President Clinton in San Francisco, California. Chu stated he had heard that "there was a banquet" with President Clinton, but could not recall how he had learned of it. Chu also stated that he was not invited to the banquet, that he "just went" and did not recall if he spoke to any DNC fund-raiser at the banquet, other than to exchange greetings.²⁴

It appears that the DNC's return of Yama Ren's check, upon which this matter was based, resulted from a misunderstanding. In response to DNC inquiries regarding the propriety of Yama Ren's contributions, Chu, in a letter dated January 17, 1997, advised the DNC that Yama Ren was a U.S. subsidiary of Yama Ren Taiwan. Chu also requested in his letter that the DNC return the contribution. Based on Chu's response to the DNC's inquiry and the resulting uncertainty of Yama Ren's status, the DNC concluded that funds from Yama Ren Taiwan were

²³ A contributor search of the Commission's database indicates that between 1991 and 1997, Chu made a total of six (6) additional contributions: four to the RNC of \$1,000 each, one to Clinton/Gore in 1995 for \$1,000, and one to the DNC in 1997 for \$300. Those contributions appear to have been made by Chu personally or by his previous businesses, Lishih International Trading Company and American International Business Inc.

²⁴ Chu's testimony regarding his decision to attend the event is not entirely convincing. DNC tracking forms state that the contribution was solicited by Mark Thomann, Midwest Finance Director for Clinton/Gore '96. While Chu acknowledged being acquainted with Thomann, Chu maintained that the contribution was not solicited. Moreover, Chu's account would appear implausible in light of the security precautions taken by the U.S. Secret Service whenever the President attends such an event.

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used for the contribution and refunded the contribution on June 27, 1997. In his interview, Chu explained that when he read in the newspapers that foreign companies were not allowed to make contributions, "I thought the branch company of a Taiwan company [was] not supposed to make contributions." With respect to the January 17, 1997 letter Chu sent to the DNC, Chu stated, "I should not have written that letter."

In short, the available information supports Chu's assertion that Yama Ren's \$10,000 contribution was made by a U.S. company with funds generated in the normal course of business, and that no foreign national was involved in the decision-making process regarding the contribution. The record does not resolve all questions regarding this matter. It is uncertain, for example, who solicited the contribution and how, and it is unclear why Yama Ren would use over half of the funds in its checking account to make a \$10,000 contribution. Nevertheless, considering the above information, the lack of contrary evidence, the minimal amount of the contribution, and the potential cost of additional investigation, this Office believes that additional investigation is unwarranted. Accordingly, this Office recommends that the Commission take no further action against Yama Ren and close the file as to this respondent.

d. Comete Hong

On June 17, 1997, the Commission found reason to believe that Hong violated 2 U.S.C. § 441e(a) in light of the DNC's determination that foreign funds were used to finance her \$10,000 contribution, and approved a deposition subpoena for her.²⁵ On the same date, the Commission also issued interrogatories and a document subpoena to Hong.

On September 4, 1997, Hong, who has been a U.S. citizen since 1991, provided responses to some of the interrogatories, while asserting her Fifth Amendment privilege as to others. Hong

²⁵ The DNC disgorged Hong's contribution to the U.S. Treasury.

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stated that, from May 1996-September 1996, she worked for Cheong Am America, Inc.

("Cheong Am"). Cheong Am, its president, John H.K. Lee ("Lee"), and its foreign parent, Ateck Company, Ltd. ("Ateck"), are all respondents in this matter, based on reports that Ateck supplied the funds necessary for Lee to contribute \$250,000 of Cheong Am's corporate funds to the DNC. See the First General Counsel's Report dated May 30, 1997 at 22-23.

Although Hong refused to answer interrogatories which asked about her contributions to the DNC, public records reveal that Hong contributed \$10,000 to the DNC on September 4, 1996. Hong's bank records, which she produced to us, show a \$10,000 deposit to her checking account on September 3, 1996. Hong has made no other contributions apart from this one.

Hong's attorney told the staff that Hong was a "little fish" who might be able to give us "big fish" in return for immunity, but that Hong would decline to respond further without immunity. It appears that Hong may be a valuable source of information about respondents Lee, Cheong Am and Ateck.²⁶ Therefore, while the Commission is not empowered to grant immunity from criminal prosecution, this Office recommends that the Commission offer to take "no further action" against Hong if she agrees to submit to a full and complete deposition with this Office. Although Hong may decline to waive her Fifth Amendment rights in exchange for such an offer, it is possible that the opportunity to avoid civil liability and a civil penalty may persuade her to do so. If she declines, we will go to the briefing stage.

²⁶ Although Ateck has cooperated with the Commission's investigation, recently its counsel has stated that such cooperation may have ceased. Since then, counsel has withdrawn from representing the company. Cheong Am, which is, according to Ateck, a shell corporation with no assets, has provided no discovery. This Office has been unable to locate Lee and he has, of course, provided no discovery.

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3. Pre-MUR 372

Pre-MUR 372 was generated by a referral from the U.S. House of Representatives Committee on Government Reform and Oversight ("House Committee") alleging that the DNC and others violated 2 U.S.C. §§ 441e(a) and 441f and 11 C.F.R. § 103.3 by making, accepting and retaining certain contributions. As such, it is closely connected with MURs 4530, 4531, 4547, and 4642 (collectively, "MUR 4530"). See footnote 1. The House Committee based its referral on its *Investigation of Political Fundraising Improprieties and Possible Violations of Law - Interim Report*, H.R. Rep. No. 105-829 (1998) ("Interim Report"), which details over \$1.8 million in allegedly illegal contributions made during the 1992, 1994, and 1996 election cycles that have been retained by the DNC and state Democratic parties.

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b. Joan Tumpson

As noted *supra* in Section 2.B.2a., Joan Tumpson of Miami, Florida was recently interviewed by this Office in regard to her role in the \$5,000 contribution made to the DNC by Gilberto Pagan. Tumpson indicated that at the suggestion of Mitchell Berger, an acquaintance of

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her husband Eliezer Rivlin, she and her husband became involved in raising funds for the DNC for the first time in 1996.⁵⁰

Tumpson and Rivlin subsequently solicited \$22,000 in contributions to the DNC, including the \$5,000 contribution which Tumpson solicited from Mr. Pagan. During the interview, Tumpson stated that when she began seeking contributions for a February 19, 1996 luncheon for Vice President Gore, she realized that there were not many people who were willing to pay \$2,500 for such an opportunity. She indicated that she discussed the problem with her then law partner, Steve Charchat, and he suggested that one of his clients, Gilberto Pagan, might be interested in attending the luncheon. Tumpson stated that at the time of her conversation with Charchat, she knew that Pagan had been Charchat's client for approximately two years; however, she did not know him personally. Tumpson recalled that Charchat telephoned Pagan to tell him about the event. Pagan expressed interest in attending the event and making a \$5,000 contribution so that he and Charchat could attend the luncheon. According to Tumpson, she later spoke by telephone to Pagan about the luncheon fundraiser.

Tumpson stated that upon receiving the contribution check from Pagan, she contacted Berger's assistant, who was known to her only as Bonnie, and was told to include Pagan's name and home address on the check.⁵¹ Tumpson indicated that in a subsequent conversation with Bonnie, Tumpson agreed to fax a copy of the check to Bonnie and to deliver the check to Berger at the luncheon. Bonnie allegedly asked Tumpson for Pagan's social security number; however,

⁵⁰ According to Tumpson, Berger sent information to their home pertaining to upcoming fundraising events in Florida, including a February 19, 1996 luncheon for Vice-President Gore. Tumpson indicated that she had received no training from the DNC regarding fundraising and that the only instructions she received were instructions on forwarding contributions.

⁵¹ The check, which was drawn on the Bank of Canada, clearly displays Pagan's home address in the Dominican Republic.

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when Tumpson indicated that Pagan did not have a social security number, Bonnie indicated that was fine.

Tumpson attended the February 19, 1996 luncheon along with Pagan and Charchat, but indicated that she had no further contact with Pagan after the luncheon. She stated during the interview that several months after the luncheon, she was contacted by a DNC representative regarding Pagan's citizenship status. Tumpson told the representative that she did not know Pagan's citizenship status. According to Tumpson, she subsequently learned that Pagan was a citizen of the Dominican Republic. Tumpson also stated that she had not been aware of the Act's prohibition regarding foreign national contributions.

In general, the other solicitor respondents in MUR 4530 raised substantial amounts in suspect contributions from multiple contributors. In contrast, Tumpson's violation appears to be an isolated incident involving a small amount of money. Based on these facts and circumstances, this Office is recommending that the Commission find reason to believe that Tumpson violated 2 U.S.C. § 441e(a), admonish her, but take no further action and close the file regarding this respondent.

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III. RECOMMENDATIONS

- 1.
2. Find probable cause to believe that Ying Chiu Tien violated 2 U.S.C. §§ 441e(a) and 441f but take no further action against her and close the file in regard to this respondent.
- 3.
- 4.
5. Take no further action regarding Yama Ren Trade Enterprise, Ltd. and close the file as to this respondent.
6. Offer to take no further action against Comete Hong in exchange for her submitting to a full and complete deposition by this Office.
7. Open a MUR in Pre-MUR 372.
- 8.

9.

10.

11.

12.

13. Find reason to believe that Joan Tumpson violated 2 U.S.C. § 441e(a) but take no further action against her and close the file in regard to this respondent.

14.

15.

16.

17.

18.

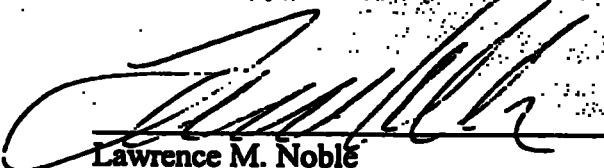
19.

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20. Approve the appropriate letters.

Date

6/4/99


Lawrence M. Noble
General Counsel

Staff Assigned: Mark Allen; Ruth Heilizer; Susan Lebeaux; Kamau Philbert; Mary Taksar

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